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NEIL H. GREENBERG

JUSTIN M. REILLY*

* ADMITTED IN N.Y. & C.T.

April 10, 2012

VIA: ECF filing

Honorable Justice Denis R. Hurley
United States District Judge
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

RE: Lotierzo v. Marios Pizza of Bohemia, Inc. et al.
11 CV 3554 (DRH) (ETB)

Honorable Sir:

This office represents the plaintiff in the above action.

Kindly accept this correspondence as the parties' joint response to the Court's Order to Show Cause.

In this Fair Labor Standards Act ("FLSA"), 29 U.S.C. section 201 et seq., case, discovery revealed that the gross annual volume of sales made or business done by the defendants during the years of the plaintiff's employment was less than \$200,000.00. As such, the defendants were not an enterprise engaged in commerce or in the production of goods for commerce under the FLSA.

Additionally, the defendant, Marios Pizza of Bohemia, Inc., is a small pizzeria with only one location in Suffolk County, New York. The plaintiff did not appear to be engaged in commerce or in the production of goods for commerce which would subject the defendants to the FLSA.

Thus, based upon the foregoing, the plaintiff has decided to discontinue this action and file a complaint in the Suffolk County Supreme Court alleging violations of the overtime provisions of the New York Labor Law and the regulations pertaining thereto.

Therefore, it is the plaintiff's respectful request that Your Honor So-Order the Stipulation of Dismissal so that the plaintiff may pursue his remedies in state court.

If you have any questions, kindly contact the undersigned.

Yours truly,

Justin M. Reilly

cc: Raymond Giusto, Esq.